HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
And
HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL NO.2558 OF 2005

-

Between:
Sri M.Y.A.Baig

.....Appellant

AND

Municipal Corporation of Hyderabad
Represented by its Commissioner,
Tank Bund, Hyderabad and 3 others.

.....Respondents

::JUDGMENT::

Counsel for the appellant : Sri M.Satyanarayana Goud

Counsel for Respondents 1 to 3 : Smt.Jyothi Kiran

Counsel for Respondent No.4 : Sri P.Venugopal

Dated 03/4/2006

Per Sri G.S.Singhvi, CJ

This appeal is directed against order dated 22.11.2005 passed by the learned Single Judge, whereby he declared that Writ Petition No.24670 of 2005 filed by the appellant for directing respondent Nos.1 to 3 to remove the alleged illegal construction made by respondent No.4 Mrs. Aysha Khan on plot bearing No.8-2-674/A/H/A/1, Road No.13, Banjara Hills, Hyderabad is not well founded, but made it clear that if respondent No.4 makes any construction in deviation of the building permission or against the building bye-laws, then the first respondent shall be free to take necessary action in accordance with law.

While issuing notice of the appeal on 28.12.2005, the Division Bench permitted respondent No.4 to raise construction strictly in accordance with the sanctioned plan. The Court also clarified that respondent No.4 shall not be entitled and shall not be permitted to make any construction in violation of the sanctioned building plan. For the sake of convenient reference, order dated 28.12.2005 is reproduced below.

> "Notice to the respondents for January 24, 2006 to show cause as to why the appeal may not be admitted and finally disposed of.
>
> Smt.Jyothi Kiran, one of the standing counsel for Municipal Corporation of Hyderabad, accepts notice on behalf of respondent Nos.1 to 3. Counter affidavit on behalf of these respondents be filed within three weeks with an advance copy to the counsel for the appellant.
>
> Personal service is permitted on respondent No.4.
>
> In the meanwhile, respondent No.4 may raise construction strictly in accordance with the

sanctioned building plan. This would necessarily mean that she shall not be entitled and shall not be permitted to make any construction in violation of the sanctioned building plan. This order would operate notwithstanding the interim order, if any, passed by the Civil Court in the suit filed by respondent No.4."

In the affidavit dated 24.1.2006 filed by Sri Khalid Serwar, Assistant City Planner, Municipal Corporation of Hyderabad, it was averred that some of the constructions made by respondent No.4 were against the sanctioned building plan. This is evident from paragraphs 4,5, 6 and 7 of the affidavit of Sri Khalid Serwar, which are extracted below.

" 4. It is submitted that the Respondent Corporation has accorded the building permission for the proposed construction of Ground, First & Second floors for Residential building at bearing premises No.8-2-674/1/H/A/1 Sy.No.129/75/04, vide permit No.100/43 dated 24.11.2004 as required U/s.428 & 433 of HMC Act 1955, basing on the strength of the documents submitted by the 4th Respondent. The 4th Respondent commenced the construction work without serving the notice of commencement, required U/s.440 of HMC Act 1955. Further the 4th Respondent deviated the sanctioned plan and constructed Basement, Ground, First floor with the following set backs:

Sides	Required	Provided	Shortfall	Remarks
Front (N)	3.50 mts.	1.00 mts	2.5 mts	--
Rear	3.00 mts.	1.00 mts.	2.00 mts.	--
Side-1	2.00 mts.	2.00 mts.	--	--
Side 2	3.00 mts	1.00 mts.	2.00 mts	--

5. The Respondent Corporation has received the complaints from the petitioner dated 6-9-2005 and 9-6-2005 regarding the stop the deviations made by the petitioner and requested to inspect the

premises. And the Corporation has been initiated the action twice by stopping the construction at the initial stage itself. Even thereafter when the 4th Respondent again proceeded with the construction in deviation with the sanctioned plan, the Respondent Corporation has removed the centering of the Ground floor. The 4th Respondent before taking further action of issuing notices for such deviations, has directly approached the City Civil Court. The IV Junior Civil Judge, City Civil Court granted Interim Injunction order in I.A.No.1027/2005 in O.S.No.6159/2005. Apart from taking steps to file counter and written statement in the suit, the Respondent Corporation also conducted Panchanama duly recording the stage of the construction as on ground on 20.12.2005 and 7.1.2006. The Respondent Corporation has also addressed a letter to the petitioner vide letter 6.1.2006 informing that to make construction in conformity to the sanctioned plan, otherwise action will be initiated as per the due procedure of the HMC Act. Further, the Respondent Corporation has also issued show cause notice U/s.452 of the HMC Act, 1955 on 21.1.2006.

6 . It is submitted that the Respondent Corporation has accorded the building permission for the construction of Ground + 2 upper floors for Residential building only. The Respondent-4, apart from deviating the sanctioned plan has approached the Civil Court and filed the suit against the MCH vide O.S.No.6159/2005 in the Court of IV Junior Civil Judge, C.C.C., Hyderabnad without issuing a notice U/s.685 of HMC Act 1955 as required.

7. It is submitted that the Respondent – 4 has submitted the plans for the proposed construction of Ground + 2 upper floors as per the provisions of the G.O.Ms.No.423, MA, dated 31.7.1998 as required U/s.428 & 433 of HMC Act. Accordingly, the Respondent Corporation has accorded the building permission as per the provisions of the H.M.C. Act. The Respondent-4 is supposed to make the construction as per the sanctioned plan."

After taking cognizance of the averments contained in the pleadings of the parties including the affidavit of Sri Khalid Serwar and the statement made by Sri P.Venugopal, learned counsel for respondent No.4 that the modified building plan submitted by his client has not been decided, the Court passed order dated 20.2.2006 and directed the concerned authorities of the Municipal Corporation to decide the application made by respondent No.4. That order reads as under:

> "Heard learned counsel for the parties and perused the record.
>
> Sri P. Venugopal submitted that his client had filed an application along with modified plan, but the same has not been decided so far by the concerned authority of the Municipal Corporation. He submitted that the Court may direct the Municipal Corporation to decide the application for sanction odf the revised plan.
>
> The request made by Sri P. Venugopal appears reasonable and merits acceptance. Therefore, the case is adjourned to April 3, 2006 with a direction that the concerned authorities of the Municipal Corporation shall take appropriate decision on the application of respondent No.4 within a period of five weeks from today.
>
> Petitioner and respondent No.4 should appear before the Assistant Town Planner concerned on March 6, 2006 for representing their respective cause. After considering their submissions and keeping in view the relevant statutory provisions, the officer concerned shall take appropriate decision on the application of respondent No.4 and communicate the same to both the parties.
>
> List the case for further consideration on April 3, 2006."

Smt.Jyothi Kiran, learned standing counsel for Municipal Corporation of Hyderabad says that in compliance of the direction given by the Court, Assistant City Planner had conducted hearing on 6.3.2006 which was attended by the appellant and respondent No.4. She produced the original record including the proceeding sheet of 6.3.2006, which is duly signed by

the appellant and respondent No.4. A perusal of the proceeding sheet shows that respondent No.4 had agreed to bring down the construction to the level of G.O.Ms.No.423, MA dated 31.7.1998 in terms of all round open space and sought a week's time to submit a revised plan after making necessary changes. Smt.Jyothi Kiran also placed before the Court copies of letters dated 8.3.2006 and 25.3.2006 sent by Assistant City Planner, Circle-V, Municipal Corporation of Hyderabad to respondent No.4 requiring her to submit revised plan after dismantling the excess portion and bringing down the construction in conformity with G.O.Ms.No.423 MA dated 31.7.1998.

The xerox copies of letters dated 8-3-2006 and 25-3-2006 produced by Smt.Jyothi Kiran are taken on record.

We have heard learned counsel for the parties. Since respondent No.4 has agreed to bring down construction in accordance with the relevant Government Order, we feel that ends of justice would be met by directing her to submit the revised plan with a further direction to the competent authority to decide the same in accordance with law.

Hence, the appeal is disposed of with the following directions:

1) Respondent No.4 may submit revised plan within a maximum period of four weeks from today.

2) If the revised plan submitted by respondent No.4 is found to be in conformity with the relevant rules and Government Orders, then the competent authority of the Municipal Corporation of Hyderabad should sanction the same.

3) The sanction of the revised plan shall be preceded by dismantling the deviations already made by respondent No.4. This would necessarily mean that if respondent No.4 fails to remove the deviations, then the concerned authority shall not sanction the revised building plan of respondent No.4.

4) After sanction of the revised building plan, respondent No.4 shall be free to raise construction. If she makes any deviations from the revised sanctioned plan, then the concerned authority

of Municipal Corporation of Hyderabad shall be duty bound to remove such constructions and respondent No.4 shall not be entitled to complain against demolition of illegal constructions.

In order to facilitate the submission of revised building plan by respondent No.4 and consideration thereof by the competent authority, we direct Smt.Jyothi Kiran to supply xerox copies of letters dated 8.3.2006 and 25.3.2006 to Sri P.Venugopal, advocate for respondent No.4 by tomorrow.

G.S.SINGHVI, CJ

Dt.3/4/2006

G.BHAVANI PRASAD,J

Msv / svs